An Open Letter to the Florida Legislature:

Regarding Florida's Law Prohibiting Homosexual Adoptions

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Dear Florida Legislators,

There appears to be a fair amount of misleading information regarding Florida's long standing law prohibiting homosexual persons from adopting children and the legal consequences of striking that language from the statutes. Please consider the following seven legal facts, arguments, and perspectives on this very important aspect of Florida law.

1. The "law" on adoption is found in Florida's Statutes, not in the Court's opinion. The Third District Court of Appeals in, *FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, v. In re Matter of ADOPTION OF X.X.G. and N.R.G.*, 43 So. 3d 79 (3rd DCA 2010) rendered an opinion that Florida's law prohibiting homosexuals from adopting children was unconstitutional under the Equal Protection Clause of the state Constitution. Some have referred to this court's opinion as if it were the current law in Florida. This is incorrect. Courts can render opinions interpreting the law or overruling law, but they cannot make original law. The law in Florida regarding this issue is found in the single sentence which the House recently voted to strike from the statute. It is *"[n]o person eligible to adopt under this statute may adopt if that person is a homosexual*." Section 63.024(3)

2. The DCA decision is merely "persuasive" authority but it is not binding authority statewide. The opinion of *Adoption of XXG,* is binding or controlling authority, only within Miami-Dade and Monroe counties where the jurisdiction of the Third District Court of Appeals lies. Further, the opinion was decided on highly questionable legal grounds because the court "discovered" Florida's Constitution was somehow suddenly in conflict with Florida's Statutes.

3. DCF has for many years ignored the law and placed children with homosexuals for the simple reason that the agency is filled at a local level with pro-gay rights employees. DCF has ignored and side-stepped the prohibition in Florida's law for many years and placed children with homosexual parents. DCF would place homosexuals as foster parents (which Florida law allows as a non-permanent placement) and then just arrange for adoptions for those persons and look the other way as to the gay man's "roommate" or "friend." Because of the false cover of *Adoption of XXG* opinion, the agency continues the same practice, but now openly and aggressively.

4. Another Appeals Court in Florida could easily uphold the statute's constitutionality creating a conflict and an automatic appeal to the Florida Supreme Court. The Third DCA is

arguably the most progressive Florida Appellate Court in the state. It's very possible that another legal appeal in a more conservative court venue could produce a different result upholding Florida's long standing prohibition on homosexual adoption. A conflict between two DCA's would provoke an appeal to the Florida Supreme Court for a final authoritative decision. This final decision could be decided by a new conservative majority on Florida's high court because four of the nine current Justices will face mandatory retirement by 2019, and will be replaced by a new Governor who will be elected in 2018.

5. Even in the face of the DCA opinion, the express statutory language <u>provides direct legal protection</u> for faith-based adoption agencies. Faith-based adoption agencies like Florida Baptist Children's Home, Catholic Charities and private Christian adoption agencies are unable to place children for adoption with homosexual couples because of sincerely held religious convictions. The statutory language in Chapter 63 (which is still the law and not unconstitutional statewide) provides legal protection for these adoption agencies which place a very significant percentage of children statewide for adoption.

6. If Florida's statutory language prohibiting homosexual adoptions is removed, faith-based adoption agencies become vulnerable to legal attack by local "non-discrimination" laws which created new protected classes for sexual orientation. Currently, Florida has 13 cities and 10 counties which have created new protected classes for "sexual orientation", "gender identity" and or "gender expression." These laws have been used around the country as weapons to punish small business owners who exercise their faith in commerce and public life. In Massachusetts, Catholic Charities was forced to close and stop placing children for adoption because of legal attacks by homosexuals using that state's non-discrimination laws. Because of religious convictions, Catholic Charities were not able to place children with homosexuals and therefore had no option but to stop doing adoptions altogether. This is precisely why Florida's own so-called "Competitive Work Force Act" SB 156 / HB 33 (creating new protected classes for sexual orientation, gender identity and gender expression) is oppressive and dangerous public policy and should never see the light of day in Florida.

7. Unless a conscience clause has express preemption language clearly trumping the home rule of local government, then faith based adoption agencies could still subject to legal attack by local non-discrimination laws. If the legislature strikes the language *prohibiting* homosexual adoptions, the law will then change to *officially allow* homosexual adoptions statewide for the first time. But with the presence of local non-discrimination laws, which have created these new protected classes, the law will quickly devolve into a *requirement* to place children with homosexuals for adoption-- or else face litigation, penalties and fines --or even worse-- the closing of the adoption agency altogether. A conscience clause with express preemption language should not be used as a bargaining chip for striking the prohibition. <u>A strong conscience clause *and* the original prohibition language are needed to provide lasting legal protection for the rights of conscience of faith-based adoption agencies in Florida</u>

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